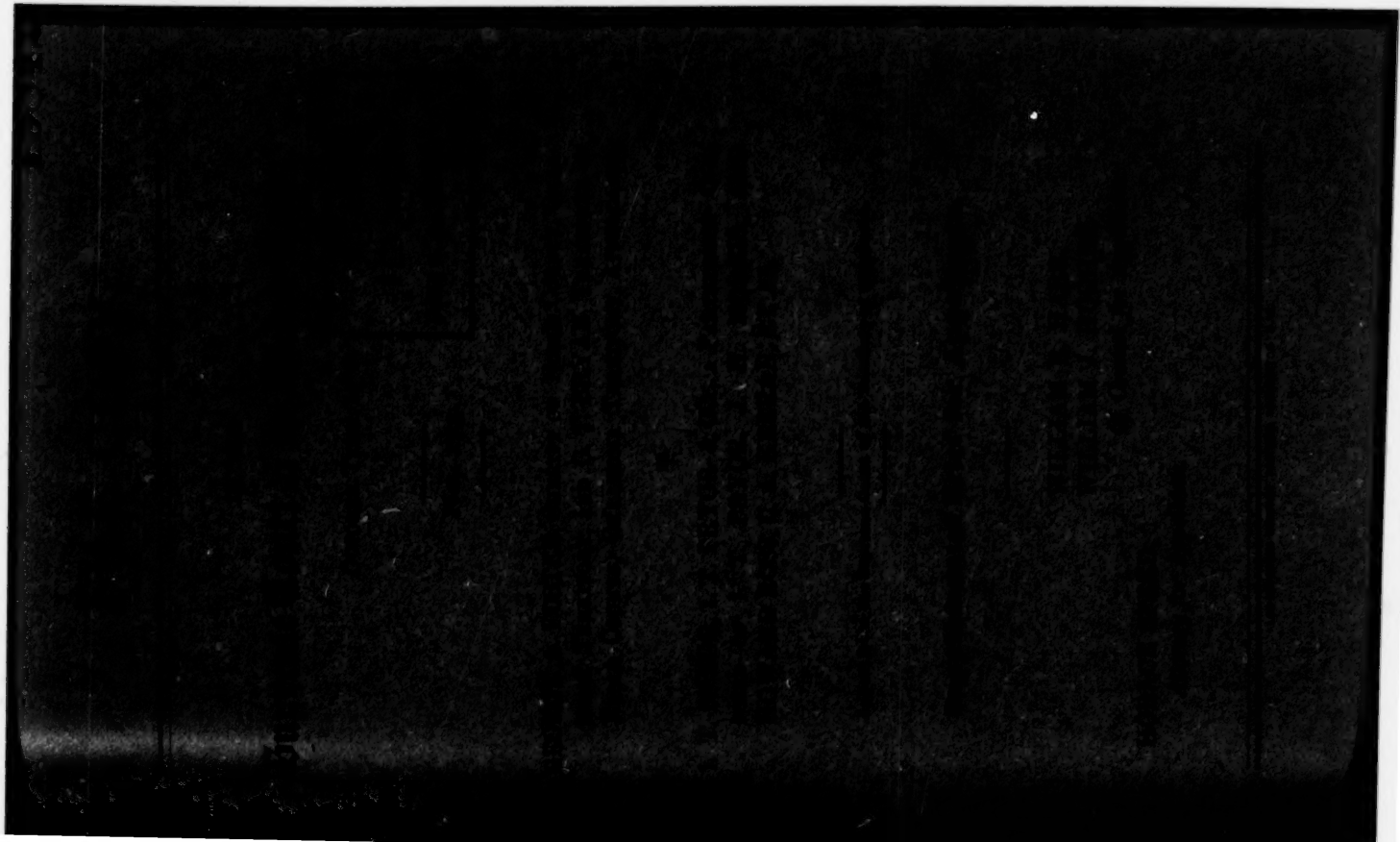

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1902.

No. 173.

GEORGE A. FOSTER, SHERIFF OF NOBLE COUNTY, OKLAHOMA TERRITORY, AND G. T. BRYAN, TREASURER OF NOBLE COUNTY, OKLAHOMA TERRITORY, APPELLANTS,

vs.

I. T. PRYOR, I. T. PRYOR & CO., A PARTNERSHIP COMPOSED OF I. T. PRYOR, J. H. MORRIS, AND HOWARD ROSS, C. A. KEERAN, ET AL.

Appeal from the Supreme Court of the Territory of Oklahoma.

Supplemental Brief for Appellants.

STATEMENT.

The Territory of Oklahoma embraces within its boundaries, as fixed by the act of Congress providing for its organization (act of May 2, 1890, ch. 182, 26 stat. 81), certain Indian reservations; but these reservations are not included within any of the organized counties of the Territory.

The organic act provided that the Territory should be

divided into three judicial districts, to be defined by the Supreme Court; and that the territory not embraced in organized counties should be attached, for judicial purposes, to such organized county or counties as that court should determine (sec. 9).

On March 5, 1895 (Sess. Laws, Okla. 1895, p. 232), the legislature of Oklahoma amended section 13, article 2, chapter 70, of the statutes relating to revenue, so as to make that section read:

> That when any cattle are kept or grazed, or any other personal property is situated in any unorganized country, district or reservation of this Territory, then such property shall be subject to taxation in the organized county to which said country, district or reservation is attached for judicial purposes.

The act of 1895 further provided that the Board of County Commissioners of the organized county should appoint a special assessor for the unorganized country, district or reservation attached thereto, and conferred upon him all the powers and duties of a township assessor. The officer whose duty it was to collect taxes in the organized county was also authorized to collect the taxes in the unorganized country, district, or reservation.

The validity of the act of 1895 was affirmed by this court in *Thomas* v. *Gay*, 169 U. S. 264, and *Wagoner* v. *Evans*, 170 U. S. 588.

In 1897 the system of township assessors, and with it the special assessor for the unorganized country, district, or reservation, was superseded, and one assessor for each county was provided whose jurisdiction was held to include such unorganized territory.

On March 10, 1899, the legislature of Oklahoma passed the act here in question (Laws Okla. 1899, chap. 28, art. 2, p. 218), which provided—

> That from and after the passage and approval of this act, no taxes shall be assessed, levied or collected

in any unorganized country, district, or reservation which shall be or which may hereafter be attached to any county for judicial purposes, except taxes for the territorial and court funds.

In assessing cattle and other personal property in the Ponca and Otoe Indian reservations for the year 1899 the county assessor of Noble County, to which those reservations had been attached for judicial purposes, ignored this latter act, believing the exemptions made thereby to be illegal, and assessed such property for all county and territorial purposes.

The various funds for which taxes were so assessed for 1899, and the rates of taxation, were as follows:

	Mills.
Territorial	5.2
Court	3.0
Salary	6.0
Road and bridge	2 0
Sinking fund	4.0
Poor and insane	1.0
Supplies	2.0
County school	2.0
Contingent	1.0
Total	26.2

The appellees brought suit in the district court of Noble County to restrain the appellants, the treasurer and sheriff of Noble County, from attempting to enforce and collect the taxes so assessed.

A temporary injunction was granted, conditioned upon the payment of the taxes for the court and territorial funds. A demurrer to the petition was interposed, and upon the hearing of the case the demurrer was sustained. A stay of execution was granted, however, pending a determination of an appeal taken by the plaintiffs to the Supreme Court of Oklahoma.

The Supreme Court of Oklahoma reversed the judgment of the district court and remanded the case to that court

with directions to enter a judgment perpetually enjoining the collection of the taxes for other than the Territorial and court funds. From that judgment the sheriff and treasurer of Noble County have appealed to this court.

ARGUMENT.

I. The Ponca and Otoe Indian Reservations Are a Part of Noble County Taxing District.

The necessary effect of the act of 1895 in making cattle and other personal property in any unorganized country, district or reservation *subject to taxation* in the organized county to which it was attached for judicial purposes, was to make such unorganized territory a part of the county taxing district. The order of the Supreme Court attaching any such territory to a county for judicial purposes made it a part of the same judicial district; the act of the legislature placing it under the general taxing jurisdiction of the county made it a part of the same taxing district. It was afterwards so treated, and the same taxes collected there as in the county proper. Of course, as the legislature does not exercise an arbitrary authority in the creation of taxing districts, this could only be done upon the theory that persons or property in the unorganized territory so attached received an equality, or a practical equality, of benefit with persons or property in the county from the taxes imposed. This was held to be the fact by this court in *Thomas* v. *Gay* and *Wagoner* v. *Evans*, above cited.

Upon the point under discussion the Supreme Court of Oklahoma said (Rec., pp. 42–43):

> The question now presented is, has the territorial legislature the power to tax the property in these reservations for territorial and court funds and not for other county purposes? The plaintiffs in error insist that the Ponca and Otoe Indian reservations, although attached to Noble County for taxing pur-

poses, form a separate taxing district, and therefore the rule of uniformity throughout the taxing district does not apply. Without determining at this time as to whether under our organic law the legislature must adopt a uniform rule for taxing all property within the taxing district, we will consider briefly the effect of attaching these reservations to Noble County for taxing purposes. When the law of 1895 was first enacted we were under the system of township assessors; therefore the legislature provided that the county commissioners of the county to which any Indian reservation was attached for taxing purposes should appoint a special assessor each year, whose duty it should be to assess the property in such reservation, and that such special assessor should have all of the powers and should be required to perform all the duties of a township assessor, and that he should give a similar bond and take the same oath as required of such township assessors, and receive the same fees. And by this same section it was provided that the officer whose duty it was to collect the taxes in the organized county to which such country, district or reservation was so attached, should collect such taxes, and was vested with all powers which he might exercise in the organized county, and his official bond by the act was made to cover all such taxes which might come into his possession. From the provisions of the act of 1895, it will be seen that *the legislature treated these reservations as it did the townships in the same county*, and they were under the same rule; and while they were not, in fact, a part of Noble County, that is, the county lines were not extended around them, *still they were attached to Noble County, and became a part of the same taxing district*; and the legislature provided for the appointment of a special assessor each year for these reservations so that they might, as nearly as possible, be placed under the same system as the townships; and when the legislature, in 1897, did away with township assessors, and provided one assessor for each county, the act repealed the other statute regarding special assessors for these reservations, and the county assessors in the counties to

> which the different reservations were attached for taxing purposes were thereby empowered to assess all of the property in their respective counties, and this power was not necessarily limited to the territory within the county lines, for the law which directs the county assessor to assess the property in his county, means also that he shall assess the property in the Indian reservation attached to his county for taxing purposes; *and while such reservations may, in fact, be clear outside of the lines of the county, it is by law placed under the same jurisdiction, and subject to the same rules.* Once a reservation is attached to a county for taxing purposes, it thereby becomes a part of the county taxing district to which it is attached. *Gay* v. *Thomas*, 169 U. S., 277, and *Russell* v. *Green* (Okla.), not officially reported, 62 Pac., 817. It therefore necessarily follows that, *if the law in question is to be upheld, it must be upon some theory other than that the Ponca and Otoe Indian reservations form a separate taxing district.*

Russell v. *Green*, 10 Okla. 340 (1900), referred to by the Supreme Court of Oklahoma, was an action to enjoin the collection of taxes levied on cattle in the Osage Indian Reservation, between March 1 and September 1, 1898. The court there said (pp. 341-2):

> It is insisted by plaintiffs in error that the transient property act of 1895 only provides for taxing property which is brought into a *county* of the Territory between March 1 and September 1, and has no reference to property brought into an Indian reservation which is no part of an organized county, and that the Osage Indian Reservation is not a part of Pawnee County. There is nothing in this contention. The Osage Indian Reservation was attached to Pawnee County for judicial and taxing purposes prior to 1898, and *for these purposes it was, in effect, a part of Pawnee County*, and property brought into that reservation during 1898 was brought into Pawnee County, within the meaning of the transient property act.

The opinion of this court in *Thomas* v. *Gay* is to the same effect. In that case the court, speaking by Mr. Justice Shiras, said (169 U. S., pp. 277–8):

> The specific objection made to the validity of these taxes as imposed on personal property located in unorganized countries or in the reservations does not seem to us to be well founded. We have already cited the cases of *Utah and Northern Railway Company* v. *Fisher*, 116 U. S. 28, and *Maricopa and Phœnix Railroad* v. *Arizona*, 156 U. S. 347, wherein territorial tax laws were held to have a valid operation over property lying within Indian reservations.
>
> *Union Pac. Railway Co.* v. *Peniston*, 18 Wall. 5, 37, was a case where unorganized country was attached by law to an organized county for *judicial* and *revenue* purposes, and the law was sustained, as appears in the decision delivered by Mr. Justice Strong, as follows:
>
> "It remains only to notice one other position taken by the complainants. It is that if the act of the State under which the tax was laid be constitutional in its application to their property within Lincoln County, the property outside of Lincoln County is not lawfully taxable by the authorities of that county under the laws of the State. To this we are unable to give our assent. By the statutes of Nebraska the unorganized territory west of Lincoln County, and the unorganized country of Cheyenne, are attached to the county of Lincoln for judicial and revenue purposes. *The authorities of that county, therefore, were the proper authorities to levy the tax upon the property thus placed under their charge for revenue purposes.*"
>
> In *Llano Cattle Co.* v. *Faught*, 5 S. W. Rep. 494 (Texas), the case was that an unorganized country was attached by law to the organized county of Scurry for judicial purposes. The officers of Scurry County assessed and levied county taxes upon the cattle of the plaintiff, a foreign corporation, kept in the unorganized country, and it was held that *the unorganized country, being in effect a part of the county to which it was so attached*, the collection of taxes on such personalty of a non-resident may be collected by the tax collector of the latter county. We are

referred to similar decisions in Kansas: *Philpin* v. *McCarty*, 24 Kansas, 393; in Ohio, *Kemper* v. *McClelland*, 19 Ohio, 308; in Iowa, *Hilliard* v. *Griffin*, 33 N. W. Rep. 156; in Michigan, *Comins* v. *Township of Harrisville*, 45 Michigan, 442.

It is to be observed that in *Thomas* v. *Gay* the argument against the validity of the act of 1895 proceeded upon the theory that that act made the unorganized territory referred to a part of the county taxing district, and it was claimed that, as the owners of property in such unorganized country did not receive the same measure of benefit from the taxes authorized to be imposed as property owners in the county, and as under the act personal property only was to be taxed, the statute violated the fundamental rules of equality and uniformity.

The act of March 10, 1899, does not create a new taxing district. On the contrary, it proceeds upon the theory that such unorganized country referred to is a part of the county taxing district. It provides that thereafter no taxes shall be assessed, levied or collected in the unorganized country, except for the court and territorial funds. Assessed, levied and collected by whom? Necessarily by the officers of the county, as that act provides no machinery for such purposes.

The act of 1899 imposes no taxes, and there is nothing in it which indicates an intention to create a new taxing district. It simply exempts property in the unorganized country referred to from the payment of certain taxes, and *exemptions from taxation can only be made upon the theory that the property exempted is within an established taxing district.*

But the act of 1899 does not exempt property in the unorganized country referred to from the payment of all county taxes. The court tax authorized by that act is for county and not territorial purposes. That tax is determined by the board of county commissioners to which such unorganized country is attached, and the fund derived therefrom is used for the payment of the judicial expenses of the county.

The territorial tax is exclusively for territorial purposes, and is fixed by the territorial board of equalization, which consists of the governor, the auditor, and the secretary of the Territory. (Laws Okla., 1895, pp. 215, 216, 217; id. 1897, p. 256.)

If, then, this unorganized country be not a part of the county taxing district, but constitutes a separate taxing district, upon what authority is the court tax for county expenses imposed? If it be a part of the county taxing district, and the property therein be not wholly exempt, then, under well-settled principles, it must be taxed for all purposes.

The judgment of the Supreme Court of Oklahoma that the effect of the act of 1895 was to make the unorganized territory referred to a part of the county taxing district should, in any event, be accepted by this court. The rule in regard to the decisions of the highest court of a State as to the meaning and effect of its legislative enactments is well settled. In *Elmendorf* v. *Taylor*, 10 Wheat. 152, Chief Justice Marshall thus expressed it (p. 159):

> This court has uniformly professed its disposition, in cases depending on the laws of a particular State, to adopt the construction which the courts of the State have given to those laws. This course is founded on the principle, supposed to be universally recognized, that *the judicial department of every government*, where such department exists, *is the appropriate organ for construing the legislative acts of that government*. Thus, no court in the universe, which professed to be governed by principle, would, we presume, undertake to say that the courts of Great Britain, or of France, or of any other nation, had misunderstood their own statutes, and therefore erect itself into a tribunal which should correct such misunderstanding. We receive the construction given by the courts of the nation as the true sense of the law, and feel ourselves no more at liberty to depart from that construction than to depart from the words of the statute. On this principle the construction given by this court to the Constitution and laws of the

> United States is received by all as the true construction; and on the same principle the construction given by the courts of the several States to the legislative acts of those States is received as true, unless they come in conflict with the Constitution, laws, or treaties of the United States.

A like rule, it is submitted, should apply in the case of the decisions of the supreme court of a Territory. It is the policy of the United States to allow organized Territories as much independence as possible in the administration of their local affairs. Though subject to the controlling power of the General Government, that power is and ought to be sparingly exercised. Certainly the judicial department of a Territory, equally with the judicial department of a State, is "the proper organ for construing the legislative acts of that government," which possesses only a local importance or application. And if such construction does not conflict with the Constitution, laws, or treaties of the United States, there can be no sound reason for a review thereof by this court.

II. The Act of 1899 Violates the Rule of Uniformity.

This is not disputed by counsel for appellees, who say (brief, p. 39):

> If this country, by virtue of being attached to Noble County, became a part of the county, the act of March 10, 1899, may be invalid for the reason that it does not provide a uniform system of taxes for the whole of the taxing district.

As already indicated, the Supreme Court of Oklahoma held that the Ponca and Otoe Indian reservations were a part of Noble County taxing district. That court also admitted that the act of 1899 violated the rule of uniformity, but sustained the act on the ground that uniformity was

not required by the organic law of the Territory. This latter proposition will be considered hereafter.

1. The requirements of the rule of uniformity were thus stated by Mr. Justice Swayne, in *Township of Pine Grove* v. *Talcott* (19 Wall. 666, 675):

> The 11th clause of the same article [speaking of sec. 11 of art. 14 of the constitution of the State of Michigan] declares that the legislature shall provide a uniform rule of taxation, except as to property paying specific taxes, and that taxes shall be levied upon such property as shall be prescribed by law. The object of this provision was to prevent unjust discriminations. It prevents property from being classified and taxed as classed by different rules. *All kinds of property must be taxed uniformly, or be entirely exempt. The unformity must be coextensive with the territory to which the tax applies.* If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout such county or city.

In *Gilman* v. *Sheboygan*, 2 Black, 510, the court said (p. 517):

> The court [the Supreme Court of Wisconsin] refer with approbation to the *Exchange Bank of Columbus* v. *Hines*, 3 O. S. Rep. 1. In that case the Supreme Court of Ohio say: "Taxing is required to be by a '*uniform rule*,' that is, by one and the same unvarying standard. Taxing by a uniform rule requires uniformity not only in the rate of taxation, but also uniformity in the mode of assessment upon the taxable valuation. Uniformity in taxing implies equality in the burden of taxation, and this equality of burden can not exist without uniformity in the mode of assessment, as well as the rate of taxation. *But this is not all. The uniformity must be coextensive with the territory to which it applies.* If a State tax, it must be uniform all over the State. If a county or city tax, it must be uniform throughout the extent of the territory to which it is applicable. But the uniformity in the rule required by the Constitution does

not stop here. It must extend to *all property* subject to taxation, so that all property may be taxed alike—equally—which *is* taxing by a uniform rule."

We forbear to examine the soundness of the conclusions of the Supreme Court of Wisconsin. They need no support at our hands. *We could add nothing to what they have so well and ably said in vindication of their own views.*. Such a discussion would incumber this opinion without throwing any new light upon the subject.

Judge Cooley, in his work on Taxation, says (p. 245):

> The basis of apportionment which is fixed upon by the general rule must be applied throughout the district. *There can not be two rules of apportionment for the same tax in the same district;* if there could be, there might be any number, and in effect there would be none at all, and every man might be assessed arbitrarily (*Tide-Water Co.* v. *Coster*, 18 N. J.. Eq. 518).

Again (p. 169):

> It has already been stated that inequality does not necessarily follow the restricting of a tax to a few subjects, only, or even to a single subject. . . . Let it reach all of a class, either of persons or things, it matters not whether those included in it be one or many, or whether they reside in any particular locality or are scattered all over the State. But when, for any reason, it becomes discriminative between individuals of the class taxed, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible. It is immaterial on what ground the selection is made; *whether it be because of residence in a particular portion of the taxing district*, or because the persons selected have been remiss in meeting a former tax for the same purpose, or because of any other reason, plausible or otherwise; for *if the principle of selection be once admitted, limits can not be set to it*, and it may be made use of for the purposes of oppression, or even of punishment.

Desty on Taxation (vol. 1, p. 176):

> Taxes are equal and uniform "when no person or class of persons in the territory taxed is taxed at a higher rate than are other persons in the same district upon the same value or thing, and when the objects of taxation are the same, by whomsoever owned or whatever they may be."

In *Hutchinson* v. *Ozark Land Company*, 57 Ark. 554, the legislature had divided a county into two judicial districts. Subsequently the county court levied a tax of five mills for general county purposes on all the property in one district, and a tax of only three mills in the other district. The court held that it was not within the power of the legislature to create a district for the levy of a tax for a county purpose which did not embrace the whole county.

In *O'Kane* v. *Treat*, 25 Ill. 458, it was held that when a city was a part of a township the legislature could not exempt its inhabitants from the payment of township taxes for highway purposes. *Fletcher* v. *Oliver*, 25 Ark. 289, is to the same effect.

2. *It is immaterial whether the property exempted is less favorably situated or does not receive the same measure of benefit as other property in the taxing district.*

In *Reelfoot Lake Levee District* v. *Dawson*, 36 S. W. 1041, 1043, the legislature had authorized a tax upon all the lands within a levee district for levee purposes, with the exception of "the area now covered by standing water of Reelfoot Lake." The Supreme Court of Tennessee held that the area being of some value, and not otherwise exempt, the constitutional requirement of uniformity was violated.

In *Jones* v. *Memphis*, 47 S. W. 138, the legislature had annexed certain outlying territory to the city of Memphis and sought to exempt property therein from the payment of certain taxes. But the court said (p. 139):

> This court is of opinion that sections 3 and 4 of

> chapter 6 are clearly unconstitutional and void, inasmuch as they exempt the annexed territory from taxes for fire, light and police protection for 10 years, and for the same time expressly prohibit the district from having the advantages of this protection. This court is of opinion that taxation must always be uniform and equal throughout the extent of the same jurisdiction; that State taxes must be equal and uniform throughout the State; that county taxes must be equal and uniform throughout the county; and that a city tax must be equal and uniform throughout the city, so far as revenues for current expenses or future wants are concerned [citing cases].

Knowlton v. *Supervisors* (9 Wis. 415), is a case in point. The city of Janesville, Wis., by its charter, included a large quantity of farming or agricultural lands. The owners of these lands, conceiving themselves to be greatly and unequally burdened by taxation for the support of the city government, applied to the legislature for relief, and an act was accordingly passed providing that such lands should be taxed at a much less rate than lands within the recorded limits of the city. The act was held to violate the rule of uniformity, the Supreme Court of Wisconsin observing (p. 421):

> It may be as was claimed by counsel that the legislature acted unwisely or perhaps unjustly in including within the territorial limits of the city so much farming or agricultural land, but that is not a matter for judicial correction. Neither is it a matter for them to correct by discrimination in taxation, when the Constitution has declared that there shall be no discrimination. The remedy lies in a repeal or an amendment of the charter.

In *Wilson* v. *Supervisors of Sutter*, 47 Cal., 91, an act of the legislature authorizing a board of county supervisors, "for good cause shown," to remit taxes within a specified levee district, violated the constitutional requirement of uni-

formity. And yet it would have been competent originally to so bound the district as to exclude the part on which it was proposed to remit the tax.

3. *Property must be taxed for all purposes or else wholly exempt. A partial exemption is invalid.*

The act of 1899, it will be remembered, authorizes property in these reservations to be taxed for one county purpose (i. e., the court fund), but exempts it from taxation for all other county purposes.

Gilman v. *Sheboygan*, 2 Black. 510, involved the validity of an act of the legislature of Wisconsin providing that all taxes thereafter levied by the common council of the city of Sheboygan for the payment of any bonds issued by the city to aid in the construction of any railroad, etc., should be levied on the real estate of said city exclusively. *This* court there said (p. 518):

> The bill avers that at the time the tax complained of was levied there was personal property in the city of the value of from $300,000 to $400,000 liable to taxation. The demurrer admits this fact. The statute prescribing the property to be taxed and that to be wholly exempted from taxation shows that this personal property must have been taxed for other purposes. This tax was levied exclusively upon the real estate of the city. That was a discrimination in favor of the personal property. It was beyond the constitutional power of the legislature to make any discrimination. *Property must be wholly exempted or not exempted at all.* No partial exemption or discrimination is permitted. To impose certain taxes exclusively upon one class of taxable property is as much a discrimination as to vary the rates of the same or other taxes upon different classes of property.

In *Hale* v. *Kenosha*, 29 Wis., 599, a provision in a city charter, by which a tax to pay the bonded debt of the city (for railroad aid, etc.) was required to be assessed on "all the lots and lands in the city, not including the improvements thereon," was

held void. The Supreme Court of Wisconsin there said (p. 604):

> The true doctrine unquestionably is, that while the legislature may by law exempt certain specific property or classes of property from taxation, such exemption, to be valid and operative, must be absolute and total. *The legislature has no power to exempt property from one tax, or from taxation for one purpose, and hold it liable to taxation for other purposes;* and this for the reason already indicated, that it is impossible to do so without violating the rule of uniformity which the constitution requires the legislature to observe.

In *Brick Co.* v. *Brewer*, 62 Maine, 62, a statute authorizing the exemption from taxation for the period of ten years of manufacturing and refining establishments thereafter established in the State, upon the vote of the town in which they were erected ratifying the same, was held to be unconstitutional, the court there said (p. 74):

> To have uniformity of taxation the imposition of and the exemption from taxation must be by one and the same authority—that of the legislature. It is for the legislature to determine upon what subject-matter taxation shall be imposed; upon land, upon loans, upon stock, etc., etc.; but the subject-matter once fixed, the rule is general, and applies to all property within its provisions. So it may relieve certain species of property from taxation, as the tools of the laborer, the churches of religious societies, etc.; but upon the non-exempted estate the taxation must be uniform as the exemptions are uniform. It can not be pretended that it would be constitutional to impose a tax on a church in A and to exempt one of the same character in B; to say that all or a part of the farms in the former shall be subject to a tax, while those in the latter shall be free from taxation. But if it be conceded that each town has the right to tax part and exempt part of the property located therein, whatever its character, uniformity in relation

to the subject-matter, as well as to the ratio of taxation, is at an end.

III. Uniformity required by the organic act of the Territory.

That act provides (26 stat. 81, 84, sec. 6):

> That the legislative power of the Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed on the property of the United States, *nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents*, nor shall any law be passed impairing the right to private property, *nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to the taxation shall be taxed in proportion to its value.*

It is manifest that the limitations here made upon the legislative power were intended to secure equal and uniform taxation. The lands and property of non-residents are not to be taxed higher than that of residents. If, then, the legislature may not discriminate between residents and non-residents, is it possible that it may discriminate between residents simply because no such discrimination is in terms prohibited?

"Nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to the taxation shall be taxed in proportion to its value." These two clauses must be read together, the latter, as the word "but" which conjoins it indicates, being a limitation upon the former. Their plain meaning is, that while the legislature may discriminate between different kinds of property, that is, may select the subjects of taxation, though such selection must be made with a view to equality and uniformity, yet when such selection is made all the property subject to the taxation—and all the property subject to the taxation is

all the property in the taxing district not wholly exempt from taxation—must be taxed in proportion to its value, that is, it must be made to bear its proportionate share of the burden.

The Supreme Court of Oklahoma admits that the provisions of the organic law require that "property of the same kind, in the same condition, and used for the same purposes, must be taxed by a uniform rule" (Rec., p. 47), but says that cattle and other property in these Indian reservations are not in the same condition as like property in the county. But the court overlooks the fact that property of the same kind in the same taxing district (and it holds that these reservations are in the same taxing district), is *conclusively presumed* to be in the same condition as other property of the same kind in the district. As already shown, the fact that certain property is situate in a less favorable portion of the district, and does not receive the same measure of benefit from the taxation, will not warrant its exemption.

In *Northern Pacific Railroad Company* v. *Walker*, 47 Fed. Rep. 681, the provisions of the organic law of the then Territory of North Dakota, that the legislature should not "make any discrimination in taxing different kinds of property, but all property subject to the taxation shall be taxed in proportion to its value," were held to require uniformity of taxation.

That case involved the validity of an act of the territorial legislature providing that all railroads in the Territory should pay a certain per cent on their gross earning in lieu of all other taxes. The Northern Pacific Company owned thousands of acres of land in the Territory which were in no way used in the operation of its road, and which, under the act, would have been exempted from general taxation.

The district court held that while railroads might be classified separately for the purposes of taxation and taxed by a method applicable to them alone, such differentiation

must be restricted to what was really railroad property, and could not be extended to lands which had no relation to the railroad or its use or operation.

It said (p. 685):

> Lands, by whomsoever owned, are subject to taxation, and must be taxed by a uniform rule according to their value. *This is the rule of the organic act*, and it must be observed.

Again (p. 686):

> It was not competent for the legislature, either under the organic act or the Fourteenth Amendment of the Constitution of the United States, to classify lands in the Territory, for purposes of taxation, into lands owned by railroad companies and lands owned by all other persons, and declare that the former should not and the latter should be taxed. The prohibition in the organic act against making "any discrimination in taxing different kinds of property" necessarily implies a prohibition against any discrimination in taxing the same kind of property. It establishes the just and reasonable rule, *which has become fundamental in our American system of taxation*, that the burdens of taxation shall fall equally upon all owners of the same kind of property. If the act in question is valid, then the wholesome and just provisions of the organic act, *intended to secure equality in the burdens of taxation, and to prevent discrimination and oppression*, are meaningless.

So the provisions of the constitution of New Hampshire, authorizing the general court "to impose and levy *proportional* and *reasonable* assessments, rates, and taxes upon all the inhabitants of and residents within the said State, and upon all the estates within the same," have been construed by the Supreme Court of New Hampshire to require equal and uniform taxation. For this reason, in *State* v. *Express Company*, 60 N. H. 219, a statute imposing a discriminatory tax upon express companies was held to be unconstitutional.

After stating that "equality and justice is the basis of all constitutional taxation, and a statute founded on any other principle can not be upheld," the court there said (p. 237):

> But this general principle of equality which, *independent of any constitutional provision*, underlies and forms the basis of all taxation is enforced here by the provision of the constitution that requires that "all assessments, rates, and taxes shall be proportional and reasonable." It is not left to the discretion of the general court to determine what is equal and reasonable and to impose such as they may consider equal, but any other than equal and reasonable taxes, rates, and assessments are prohibited, and the equality intended is "that the same tax shall be levied on the same amount of property in every part of the State, so that each man's taxable property shall bear its due proportion of the tax according to its value." (4 N. H. 568.)
>
> . . . . . .
>
> In considering the constitutional provisions on the subject of taxation, it must not be forgotten that the constitution is not so much a grant of specific powers as a limitation on the exercise of general powers. "The legislative power extends to every proper object of legislation, and is only limited by the constitution and by the fundamental principles of all government and the inalienable rights of man. Dart. Coll. *v.* Woodward, 1 N. H. 111, 114; Concord R.R. *v.* Greely, 17 N. H. 47, 54; Bank of Commerce *v.* N. Y. City, 2 Black, 620. The doctrine announced in the opinion in 4 N. H. 565 goes no further than to declare that the true constitutional idea and basis of all taxation is equality and justice, and that each person and his estate shall bear his proportional and reasonable share of the public burdens. This view was affirmed in Smith *v.* Burley, 9 N. H. 423, 427; Savings Bank *v.* Nashua, 46 N. H. 389, 398; Smith *v.* Exeter, 37 N. H. 556; Savings Bank *v.* Portsmouth, 52 N. H. 17, 26, 29; Morrison *v.* Manchester, 58 N. H. 538, 549; Edes *v.* Boardman, 58 N. H. 580, 587; Bank *v.* Landaff, 59 N. H. 164, 190, 193, 195; Gould *v.* Raymond, 59 N. H. 260, 275; Berry *v.* Windham, 59

N. H. 288; Robinson *v.* Dover, 59 N. H. 521; Railroad *v.* State, 60 N. H. 87, 94.

Again (p. 243):

> In order, however, that the tax should be proportional, it is not necessary that the rate of taxation should be the same in every town or taxing district in the State. This would be practically impossible, for each town determines for itself what amount must be raised to meet its ordinary expenses, and the amount of property and persons from whom it is to be raised are different in different towns and taxing districts; *but it is required that the rate shall be the same throughout the taxing district*—that is, if the tax is for the general purposes of the State, the rate should be the same throughout the State; if for the county, it should be uniform throughout the county—*and the requisite of proportion, or equality and justice, can be answered in no other way.*

The provisions of the constitution of Massachusetts are identical with those of the New Hampshire constitution, and, as pointed out by the Supreme Court of New Hampshire in the case just cited, have received the same construction.

Portland Bank *v.* Apthorp, 12 Mass. 252.
Com'th *v.* Savings Bank, 5 Allen, 428.
Oliver *v.* Washington Mills, 11 Allen, 268.
Com'th *v.* Savings Inst., 12 Allen, 312.
Com'th *v.* Lowell Gas-Light Co., 12 Allen, 75.
Insurance Co. *v.* Loud, 99 Mass. 146.
Prov. Inst. *v.* Boston, 101 Mass. 375.
Cheshire *v.* County Commissioners, 118 Mass. 386.
Conn. Mut. Life Ins. Co. *v.* Com'th, 133 Mass. 161, 162.
Gleason *v.* McKay, 134 Mass. 419, 424, 425.

In *Cheshire* v. *County Commissioners*, above cited, which involved the validity of a statute providing a special method for the taxation of reservoirs, the court said (118 Mass., p. 389):

> Regarding the statute then as declaring the entire

> reservoir to be a distinct and separate subject of valuation for the purposes of general taxation, and requiring that valuation to be made upon a basis which excludes all increase of value by reason of the improvements or additions made thereon for the construction and maintenance of the reservoir, however valuable or costly, the question is whether it conflicts with the constitutional provision which relates to the exercise of the taxing power by the legislature. That provision requires that all taxes levied under its authority be "proportional and reasonable," and forbids their imposition upon one class of persons or property at a different rate from that which is applied to other classes, whether that discrimination is effected directly in the assessment or indirectly through arbitrary and unequal methods of valuation. Portland Bank *v.* Apthorp, 12 Mass. 252; Commonwealth *v.* People's Savings Bank, 5 Allen, 428, 431; Commonwealth *v.* Hamilton Manufacturing Co., 12 Allen, 298, 301.

IV. Uniformity a Fundamental Limitation upon the Legislative Power.

That there are certain fundamental limitations upon the legislative power, which exist independent of any requirement of the organic law, is a principle that has been nowhere more strongly asserted than by this court.

In *Fletcher* v. *Peck*, 6 Cranch, 87, Chief Justice Marshall, speaking for the court, said (pp. 135-6):

> It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation? To the legislature all legislative power is granted, but the question whether the act of transferring the property of an individual to the public be in the nature of legislative power is well worthy of serious reflection.

In *Loan Association* v. *Topeka*, 20 Wall. 655, Mr. Justice Miller, speaking for the court, said (p. 663):

> The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.
>
> There are limitations on such power which grow out of the essential nature of all free governments —implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name.

In the latter case the court held the rule that taxes must be imposed for public purposes only, to be fundamental, and therefore a statute authorizing a town to issue its bonds in aid of a manufacturing enterprise of individuals was void.

The doctrine of these cases was reasserted in *Chicago, Burlington, etc., Railroad* v. *Chicago*, 166 U. S. 226, in which case it was held that just compensation for private property taken for public use under the authority of a State was a necessary element of the due process of law enjoined by the fourteenth amendment.

The doctrine that the rule of uniformity is fundamental and must be observed, is supported by both reason and authority. It will have been observed that, in the cases cited under the last subdivision, the courts, in construing the provisions of the organic law, were governed by this consideration.

In his work on Constitutional Limitations (5th ed.), after referring to the vast scope of the legislative power of taxation, Judge Cooley says (pp. 603, 612, 614):

> Having thus indicated the extent of the taxing power, it is necessary to add that certain elements are essential in all taxation, and that it will not follow as of course, because the power is so vast, that everything which may be done under pretense of its

exercise will leave the citizen without redress, *even though there be no conflict with express constitutional inhibitions.* Everything that may be done under the name of taxation is not necessarily a tax; and it may happen that an oppressive burden imposed by the government, when it comes to be carefully scrutinized, will prove instead of a tax to be an unlawful confiscation of property, unwarranted by any principle of constitutional government.

In the first place, taxation having for its only legitimate object the raising of money for public purposes and the proper neeeds of government, the exaction of moneys from the citizens for other purposes is not a proper exercise of this power, and must therefore be unauthorized.

. . . . . .

In the second place, *it is of the very essence of taxation* that it be levied with *equality and uniformity*, and to this end that there should be some system of apportionment. Where the burden is common, there should be common contribution to discharge it. Taxation is the equivalent for the protection which the government affords to the persons and property of its citizens, and as all are alike protected so all alike should bear the burden in proportion to the interests secured.

. . . . . .

As to all taxation apportioned upon property, there must be taxing districts, and *within these districts the rule of absolute uniformity must be applicable.* A State tax is to be apportioned through the State, a county tax through the county, a city tax through the city.

The same author, in his work on Taxation (2d ed.), says (p. 241):

The principles by which the legislative apportionment of taxes is to be tested have been so admirably stated in a Kentucky case, that we prefer quoting the language of the court in preference to any attempt at stating them in words of our own: "When shall a tax be levied? To what amount? Shall it be a capitation or property tax? Direct or indirect?

Ad valorem or specific? And what classes of property are the fittest subjects of taxation? are all questions wisely confided by our constitution to the discretion of the legislative department, subject to no other limitation than that of the moral influence of public virtue or responsibility to public opinion. But in some other respects, and so far as the power of taxation may be effectual without being thus limited, it is, in our opinion, limited by some of the declared ends and principles of the fundamental laws. Among these political ends and principles, *equality*, as far as practicable, and security of property against irresponsible power, are eminently conspicuous in our State constitution. An exact equalization of the burdens of taxation is unattainable and utopian. But still there are well-defined limits within which the practical equality of the constitution may be preserved, and which, therefore, should be deemed impassable barriers to legislative power. Taxation may not be universal, but it must be *general* and *uniform*. Hence, if a capitation tax be laid, none of the class of persons thus taxed can be constitutionally exempt upon any other ground than that of public service; and if a tax be laid on land, no appropriation land within the limits of the State can be constitutionally exempted, unless the owner be entitled to such immunity on the ground of public service. The legislature, in the plenitude of the taxing power, can not have constitutional authority to exact from one citizen, or even from one county, the entire revenue for the whole commonwealth. *Such an exaction*, by whatever name the legislature might choose to call it, *would not be a tax, but would be, undoubtedly, the taking of private property for public use*, and which could not be done constitutionally without the consent of the owner or owners, or without retribution of the value in money. Robertson, Ch. J., in Lexington *v.* McQuillan's heirs, 9 Dana, 513, 516. See also Youngblood *v.* Sexton, 32 Mich. 406.

Desty on Taxation (pp. 175–176):

The legislature has the power to prescribe, not

> only the property to be taxed, but the rule by which it must be taxed, *and the only limitation of that power is that the rule shall be uniform.* Uniformity in taxing implies equality in the burden of taxation, and this equality of burden can not exist without uniformity in the mode of assessment, as well as in the rate of taxation. . . . *A tax is not unconstitutional when it is equal and uniform throughout the taxing district.*

In *State* v. *Moore*, 113 N. C. 697, there was involved the validity of an act providing that emigrant agents (defined by the statute to mean persons engaged in hiring laborers in the State to be employed outside its limits) should pay a license fee of $1,000 for the privilege of doing business *in certain counties* of the State.

Speaking by its chief justice, the Supreme Court of North Carolina said (pp. 699–700):

> It must be manifest from these provisions that the principle of uniformity is entirely disregarded, and that, if the act is to be considered as an exercise of the taxing power of the legislature, it must, under the repeated decisions of this court, be declared unconstitutional and void.
>
> The Constitution, Art. V, sec. 3, authorizes the legislature to tax "trades, professions, franchises," etc., and, *although it is not expressly provided that such taxes shall be uniform*, "Yet," says Rodman, J., speaking for the court in *Gatlin* v. *Tarboro*, 78 N. C. 119, "*a tax not uniform*, as properly understood, *would be so inconsistent with natural justice and with the intent which is apparent in the section of the Constitution* above cited, that it would be restricted as unconstitutional."
>
> In *Worth* v. *Railroad*, 89 N. C. 291, the principle just stated was distinctly recognized and declared to be within the spirit and meaning of the fundamental law. Smith, C. J., in delivering the opinion of the court, said: "We should be reluctant to hold, if there were no question of constitutional right involved, that this method of levying taxes was sanctioned by our constitution, and consistent with the equality and uniformity which it contemplates. The

> 'uniform rule' to be observed in the exercise of the taxing power seems so far applicable to the taxes imposed on trades, professions, etc., as to require that no discriminating tax be imposed upon persons pursuing the same vocation, while varying amounts may be assessed upon vocations or employments of different kinds." Again, in *Puett* v. *Commissioners*, 94 N. C. 709, it was said: "*The principle of uniformity pervades the fundamental law*, and, *while not in the Constitution applied in express terms* to the tax on trades, professions, etc., *necessarily underlies the power of imposing such a tax.*" In this last case the court adopted the words of Miller, J., in the *Railroad Tax Cases*, 92 U. S. 575: "That while one tax may be imposed upon inn-keepers, another upon ferriers, and a still different tax on railroads, the taxation must be the same on each class—that is, the same tax upon all inn-keepers, upon all ferries and upon all railroads, in their respective classes as taxable subjects." And again in *State* v. *Powell*, 100 N. C. 525, the same language was accepted as a correct definition of "uniformity," and it was repeated "that *uniformity*, in its legal and proper sense, *is inseparably incident to the power of taxation.*"

In *State, etc.*, v. *Township Committee*, 36 N. J. 66, the legislature had passed an act which directed a portion of the funds thereby authorized to be raised for the purpose of completing a school house to be assessed only upon the inhabitants of the school district who had not paid the assessment made against them the preceding year for defraying the cost of the building in question, the amount so unpaid being considerably less than that which it was proposed to assess against them. The Supreme Court of New Jersey said (pp. 69–70):

> The act in question has none of the qualities of an act validating the proceedings in levying the former tax. It is the assumption by the legislature of the power to subject the delinquents to a penalty of $1,000 for a delinquency of $200, in the discretion of the township committee. That this is the

real import of the act is apparent. Indeed, the learned and astute counsel who argued this motion in behalf of the relators so clearly discerned the exact import of this legislation that he was driven to maintain before the court that it was within the power of the legislature to select certain individuals as subjects of taxation, and impose upon them individually such burdens as the legislature saw fit, even to the extent of the payment of the State debt, or defraying the entire expenses of the State government.

The power of the legislature in the matter of taxation is said to be unlimited. Such undoubtedly is the theory of our Government. But it is not every exaction made under color of taxation that can be supported as the legitimate exercise of the sovereign power of taxation. *It is of the very essence of taxation that it should be equal and uniform*, and that where the burden is common there should be a common contribution to discharge it. (Cooley's Const. Law, 495.) Not that it is essential to the validity of taxation that it should be levied according to rules of abstract justice. The legislature may create special taxing districts, defining their limits in its discretion, or designate certain occupations, trades, or employments as special subjects for taxation; or discriminate between different kinds of property in the rate of taxation; or may apportion the tax among the classes of persons or property made liable to taxation in such manner as may seem fit. In this way inequalities in the share of the public burden, or even double taxation, may arise without any relief except by appeal to the legislature. *But when the taxing district has been defined*, and the classes of persons or kind of property specially set apart for taxation have been designated, *the tax must be apportioned among those who are to bear the burden upon the rule of uniformity.* Cooley's Const. Law, pp. 493–513.

In *State* v. *Express Co.*, 60 N. H. 219, heretofore referred to, the Supreme Court of New Hampshire said (p. 236):

If, then, equality and justice is the basis of all con-

stitutional taxation, a statute founded on any other principle can not be upheld. It is true that absolute equality of taxation can not in all cases, perhaps not in any case, be attained; but if the inequality results from the inherent difficulty in applying the law, and not from the law itself, we can not declare the law unconstitutional and arrest the course of legislation. "*The essential characteristics of any system of taxation*, properly so called, *are certainly equality and universality.* All the persons and property within a State, district, city, or other fraction of territory having a local sovereignty for the purpose of taxation, should, as a general rule, constitute the basis of taxation." State v. Charleston, 12 Rich. 702, 732; O'Neal v. Bridge Co. 18 Md. 1. "The principle of just equality is therefore the governing one by which the validity of every tax levied by the legislature is to be determined. *This equality can be secured only by uniformity in levying the tax*, and a periodical valuation of the estate of every citizen." Black Tax Titles 6. It is not sufficient that no tax be imposed on the citizens, but by their representatives in the legislature. The citizens are entitled to require that *the legislature itself shall cause all public taxation to be fair and equal in proportion to the value of property*, so that no one species of property may be unequally or unduly assessed." 2 Kent. Com. 331.

In Brick Co. *v.* Brewer, 62 Maine, 62, heretofore referred to, the Supreme Court of Maine said (73-74):

> By article 9, sec. 8, "all taxes upon real estate, assessed by authority of this State, shall be apportioned and assessed equally, according to the just value thereof." Though this section applies specially to real estate, *yet the very idea of taxation implies an equal apportionment and assessment upon all property*, real and personal, "according to its just value." It can not for a moment be admitted that the constitution authorizes an unequal apportionment and assessment upon real and personal estate, without any reference to its "just value."
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> * * * * * * *

> The legislature may determine the amount of taxation and select the objects. They may exempt by general and uniform laws certain descriptions of property from taxation, and lay the burden of supporting government elsewhere.
>
> But while there are no limits in the amount of taxation for public purposes, nor in the subject-matter upon which it may be imposed, *the requirement that it shall be uniform and equal upon the valuations made is universal.*

It thus clearly appears that a departure from the rule of uniformity would be a taking of private property for public use without just compensation, so far as the persons not exempted are concerned, as well as a deprivation of their property without due process of law. In both these respects, therefore, the act of 1899 violates the Fifth Amendment of the Constitution of the United States.

V. The Kansas Case Distinguished.

The case of *Francis, State Treas.*, v. *A. T. & S. F. Railroad Co.*, 19 Kansas, 303, referred to by the Supreme Court of Oklahoma, is readily distinguishable from this.

That case involved the validity of an act of the State of Kansas providing for the taxation of railroad property located outside the limits of organized counties. The auditor of the State was directed to make a levy of tax upon such property for State purposes, the same as was made upon other taxable property in the organized counties, and place the same in the hands of the State treasurer for collection. If such taxes were not paid before a certain date, the State treasurer was to issue a warrant to any sheriff in the State, commanding him to levy the amount of the unpaid taxes, with certain additions of the personal property of the delinquent railroad company, and pay the same to the State treasurer.

It was contended that the act violated the rule of uni-

formity, because other personal property in unorganized counties was exempted from the tax. The court observed that the freedom from taxation of property other than railroad property in the unorganized counties under the act in question arose in the same manner as the freedom of all property in such counties under prior statutes—through the failure to provide machinery for reaching it. The question presented was, therefore, stated to be "*whether the failure to provide machinery for collecting taxes on all the property in the unorganized counties* renders unconstitutional the means employed to collect taxes on a portion of said property, and invalidates the tax attempted to be collected by such means."

The court sustained the statute on the ground that the constitution of the State did not expressly require all property to be taxed. Referring to the question of uniformity, Mr. Justice Brewer, who delivered the opinion of the court, said (p. 314):

> We do not wish to be understood as intimating that there is no restriction on legislative action in the matter of taxation. *Underlying all valid taxation rests the principle of uniformity, a principle whose existence is implied if not in positive and express terms enjoined by the provisions of our Constitution.* But in practical operation, a general rule or principle is often limited by some other general rule or principle, or by the facts and conditions under which its application is invoked. And sometimes it happens that a general rule is given its truest and most thorough enforcement by an apparent disregard in minor and temporary matters of its mandates. Thus it may be that uniformity in the burden of taxation, will be secured in the truest and best sense by not attempting to extend the machinery of taxation into the unorganized counties *where the expense of the machinery may exceed the proceeds of the tax;* and this being so, the principle of unifomity is in no just sense overthrown or disregarded by leaving the property in those counties untaxed. In a limited sense it may be said that there

> is a disregard of the obligations of uniformity because there is no attempt to reach all property; but in a higher and better sense, it is clear that there is secured an equality and uniformity in the burden of taxation. The spirit is present, though the letter may be wanting.

At the close of his opinion, the justice said (p. 316):

> The conclusions which we have reached are by no means entirely satisfactory to us. We hold the section to be constitutional and valid, not because it is clear to us that it is so, but because it is not clear to us that it is not; and the benefit of the doubt must be given to the law. The question would be different if discrimination was attempted between property in organized counties, or if the constitution did not contain but a single provision which seems to imply and rest upon the assumption of organized communities.

No such state of facts are presented in this case. Here the unorganized country referred to is subject to taxation in the organized county to which it is attached for judicial purposes, and the machinery for the collection of taxes in such country, namely, the county machinery, is adequate for the collection of all taxes and has been so employed. The exigency which justified a departure from the rule of uniformity does not therefore exist here.

It is also to be observed that the Kansas statute was one imposing taxes, while the Oklahoma act is one making exemptions, and therefore in derogation of the sovereign power. Hence the final consideration which moved the court to sustain the act in the former case does not apply here. A statute making exemptions is not entitled to the benefit of the doubt.

VI. The Act of 1899 Has No Present Application.

The language is—

> "That from and after the passage and approval of

> this act, no taxes shall be assessed, levied or collected in any unorganized county, district, or reservation *which shall be* or *which may hereafter be* attached to any county for judicial purposes, except taxes for the territorial and court funds."

As the statute undertakes to grant an exemption from taxation, it is in derogation of public right, and is therefore to be construed *strictissimi juris*. The language on its face is entirely in the future. To give it present application the words "*shall be* or which may hereafter be" must be construed to mean "*now is* or which may hereafter be." Two words must be eliminated, and two other words substituted. The words "shall be," it will be noticed, are twice used in the same sentence in the act, and it will be presumed that they are used in both places with the same meaning.

Were this a case in which the intention of the legislature was to be sought in the language used, the point might not be insisted on; but it is to be remembered that, in a case where an exemption from taxation is claimed, the intention of the legislature to grant it and the nature of the exemption granted must appear in clear and unambiguous language.

The doctrine of this court as to the strict construction of tax exemption acts is well settled.

In *United States* v. *Goldenberg*, 168 U. S. 95, the court, speaking by Mr. Justice Brewer, said (p. 102):

> The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. *He is presumed to know the meaning of the words and the rules of grammar.* The courts have no function of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. *No mere omission, no mere failure to provide*

> *for contingencies,* which it may seem wise to have specifically provided for, *justify any judicial addition to the language of the statute.*

Exemptions from taxation are usually made at the instigation and with the knowledge of the persons exempted, which is another reason for their strict construction. Thus, in *Ohio Life Insurance and Trust Co.* v. *Debolt,* 16 How. 416, which involved the interpretation of a law of Ohio under which the company claimed an exemption upon taxation, Chief Justice Taney said (p. 435):

> The rule of construction, in cases of this kind, has been well settled by this court. The grant of privileges and exemptions to a corporation are strictly construed against the corporation and in favor of the public. *Nothing passes but what is granted in clear and explicit terms,* and neither the right of taxation nor any other power of sovereignty which the community have an interest in preserving, undiminished, will be held by the court to be surrendered, unless the intention to surrender is manifested by words too plain to be mistaken. This is the rule laid down in the case of *Billings* v. *The Providence Bank,* and reaffirmed in the case of *The Charles River Bridge Company.*
>
> Nor does the rule rest merely on the authority of adjudged cases. It is founded in principles of justice, and necessary for the safety and well being of every State in the Union. For it is a matter of public history, which this court can not refuse to notice, that almost every bill for the incorporation of banking companies, insurance and trust companies, railroad companies, or other corporations, is drawn originally by the parties who are personally interested in obtaining the charter; *and that they are often passed by the legislature in the last days of its session, when, from the nature of our political institutions, the business is unavoidably transacted in a hurried manner, and it is impossible that every member can deliberately examine every provision in every bill upon which he is called on to act.*

In the present case the Oklahoma statute under which the exemption is claimed was passed on the last day of the session of the legislature. (Sess. Laws 1899, pp. 218, 219; *Id.*, certificate Secretary of the Territory, p. iv.)

In the Debolt case the court further said (p. 436):

> On the other hand, those who accept the charter have abundant time to examine and consider its provisions before they invest their money; and if they mean to claim under it any peculiar privileges, or any exemption from the burden of taxation, it is their duty to see that the right or exemption they intend to claim is granted in clear and unambiguous language. The authority which this court is bound, under the Constitution of the United States, to exercise, in cases of this kind, is one of its most delicate and important duties; and if individuals choose to accept a charter in which the words used are susceptible of different meanings, or might have been considered by the representatives of the State as words of legislation only, and subject to future revision and repeal, and not as words of contract, the parties who accept it have no just right to call upon this court to exercise its high power over a State upon doubtful or ambiguous words, nor upon any supposed equitable construction or inferences made upon other provisions in the act of incorporation. If there are equitable considerations in their favor, the application should be made to the State, and not to this court. If they come here to claim an exemption from their equal share of the public burdens, or any peculiar exemption or privilege, they must show their title to it, and that title must be shown by plain and unequivocal language.

In *Vicksburg, etc., Railroad Company* v. *Dennis*, 116 U. S., 665, the question involved was whether a charter which contained the provision, "The capital stock of said railroad company shall be exempt from taxation, and its road, fixtures, workshops, warehouses, vehicles of transportation, and other appurtenances shall be exempt from taxation *for ten*

years after the completion of said road within the limits of this State," exempted the road, fixtures and appurtenances of the railroad from taxation before such completion of the road. In that case, the future aspect of the statute involved was much less pronounced than in the present case.

Speaking by Mr. Justice Gray, the court there said (p. 667):

> In the leading case of *Providence Bank* v. *Billings*, 4 Pet. 514, Chief Justice Marshall, speaking of a partial release of the power of taxation by a State in a charter to a corporation, said:
>
> "That the taxing power is of vital importance, that it is essential to the existence of government, are truths which it can not be necessary to reaffirm." "As the whole community is interested in retaining it undiminished, that community has a right to insist that its abandonment ought not to be presumed, in a case in which the deliberate purpose of the State to abandon it does not appear." "*We must look for the exemption in the language of the instrument*; and *if we do not find it there, it would be going very far to insert it by construction.*" 4 Pet. 561–563.
>
> In *Philadelphia and Wilmington Railroad* v. *Maryland*, 10 How. 376, Chief Justice Taney said: "This court on several occasions has held that the taxing power of a State is never presumed to be relinquished, unless the intention to relinquish is declared in *clear and unambiguous terms.*" (10 How. 393.)
>
> In the subsequent decisions the same rule has been strictly upheld and constantly reaffirmed in every variety of expression. It has been said that "neither the right of taxation, nor any other power of sovereignty, will be held by this court to have been surrendered, unless such surrender is expressed in terms too plain to be mistaken;" that exemption from taxation "should never be assumed unless the language used is too clear to admit doubt;" that "nothing can be taken against the State by presumption or inference; the surrender, when claimed, must be shown by *clear, unambiguous language, which will admit of no reasonable construction consistent with the reservation of the power*; if a doubt arise as to the intent of

the legislature, that doubt must be solved in favor of the State;" that a State "can not by ambiguous language be deprived of this highest attribute of sovereignty;" that any contract of exemption "is to be rigidly scrutinized, and never permitted to extend either in scope or duration, beyond what the terms of the concession clearly require;" and that such exemptions are regarded "as in derogation of the sovereign authority and of common right, and therefore not to be extended beyond the exact and express requirement of the grants, construed *strictissimi juris*." (Jefferson Branch Bank *v.* Skelly, 1 Black, 436, 446; Gilman *v.* Sheboygan, 2 Black, 510, 513; Delaware Railroad Tax, 18 Wall. 206, 225, 226; Hoge *v.* Railroad Co., 99 U. S. 348, 355; Southwestern Railroad *v.* Wright, 116 U. S. 231, 236; Erie Railway *v.* Pennsylvania. 21 Wall. 492, 499; Memphis Gaslight Co. *v.* Shelby Taxing District, 109 U. S. 398, 401; Tucker *v.* Ferguson, 22 Wall. 527, 575; West Wisconsin Railway *v.* Supervisors, 93 U. S. 595, 597; Memphis & Little Rock Railroad *v.* Railroad Commissioners, 112 U. S. 609, 617, 618.)

This case has been followed in—

Chicago, etc., Rwy. Co. *v.* Guffey, 120 U. S. 569, 575; Yazoo R. R. Co. *v.* Thomas, 132 U. S. 174, 185, and Schurz *v.* Cook, 148 U. S. 397, 409.

It was urged in the Vicksburg case that the intent of the legislature undoubtedly was to exempt the railroad company from taxation while its road was being constructed and it was earning no dividends. The court, however, said that if the legislature had so intended it would have been easy to use the word "until" instead of "for;" and that the statute must be read as written.

In *Ford* v. *Delta and Pine Land Co.*, 164 U. S. 662, it was held that a provision of an act of the State of Mississippi chartering a railroad company, which provided that "the capital stock and *all the property and effects of said company* shall be exempt from taxation until said road is com-

pleted," could not, under the authority of the previous decisions of the court, be construed as including real estate belonging to the company not used in the actual operation of its road.

The case of *Lake County* v. *Rollins*, 130 U. S. 662, involved the construction of a section of the constitution of Colorado. The court declined to make a substitution of words in order to arrive at the supposed meaning of its makers. Speaking by Mr. Justice Lamar (p. 670), it said:

> To get at the thought or meaning expressed in a statute, a contract or constitution, the first resort, in all cases, is to the natural signification of the words in the order of grammatical arrangement in which the framers of the instrument have placed them. If the words convey a definite meaning which involves no absurdity, nor any contradiction of other parts of the instrument, then that meaning, apparent on the face of the instrument, must be accepted, and neither the courts nor the legislature have the right to add to it or take from it. (Newell *v.* People, 7 N. Y. 9, 97; Hills *v.* Chicago, 60 Illinois, 86; Denn *v.* Reid, 10 Pet. 524; Leonard *v.* Wiseman, 31 Maryland, 201, 204; People *v.* Potter, 47 N. Y. 375; Cooley, Const. Lim. 57; Story on Const. Sec. 400; Beardstown *v.* Virginia, 76 Illinois, 34.) So, also, where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction. (United States *v.* Fisher, 2 Cranch, 358, 399; Doggett *v.* Florida Railroad, 99 U. S. 72.)

Even where the statute is not one making exemptions, the plain meaning of the statute is not to be departed from simply because that meaning may seem unreasonable or absurd in its consequences.

In *Pirie* v. *Chicago Title and Trust Company*, 182 U. S. 452, where the question was whether a preference was given in the National Bankrupt Act of July 1, 1898, the court

quoted as follows the rule expressed in *Sturgis* v. *Crowninshield*, 4 Wheat. 202:

> It would be dangerous in the extreme to infer from extrinsic circumstances that a case for which the words of an instrument expressly provide shall be exempted from its operation. Where words conflict with each other, where the different clauses of an instrument bear upon each other, and would be inconsistent unless the natural and common import of words be varied, construction becomes necessary, and a departure from the obvious meaning of words is justifiable. But, if in any case, the plain meaning of a provision, not contradicted by any other provision in the same instrument, is to be disregarded, because we believe the framers of that instrument could not intend what they say, it must be one in which the absurdity and injustice of applying the provision to the case *would be so monstrous* that all mankind would, *without hesitation*, unite in rejecting the application.

It is also to be observed that the exemption of any particular property from taxation results in the imposition of increased taxes upon the property otherwise situated which is not exempt..

> Brewer Brick Company *v.* Brewer, 62 Me. 62.
> Farnsworth Company *v.* Lisbon, 62 Me. 451.

It is unnecessary to cite further cases on this point. The principle is the same whether the exemption claimed is found in an act of incorporation, or in a statute providing a system of taxation. The statute in the present case passed under circumstances similar to those supposed in the Debolt case certainly did not grant the exemption claimed in clear and unambiguous language, no matter what the intention of the legislature may have been. It was the duty of the legislature to express its will clearly and positively, and where it has not done so the courts can not be expected to lend their aid to increase the general public burden.

VII. The Act of 1899 is Local or Special Legislation.

The act of Congress of July 30, 1886, 24 Stat. 170, c. 818, entitled "An act to prohibit the passage of local or special laws in the Territories of the United States," etc., provides (sec. 1):

> The legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say . . . for the assessment and collection of taxes for territorial, county, township or road purposes.

In Bouvier's Law Dictionary (Rawle's Revision, vol. 2, p. 1034) special and local laws are thus defined:

> A special law is one which relates either to particular persons, places, or things, or to persons, places, or things which, though not particularized, are separated by any method of selection from the whole class to which the law might, but for such legislation, be applicable. Binney, Restr., etc., 26.
>
> A local law is one whose operation is confined within territorial limits, other than those of the whole State or any properly constituted class or locality therein.
>
> The features of local and special legislation overlap, but they are not coterminous. The matter to which a local law relates may be either general or special, but in either case the law itself is not in force outside of the locality for which it is passed.

The Supreme Court of Oklahoma has held that any unorganized country, district, or reservation attached to an organized county for judicial purposes is, by virtue of the act of 1895, a part of the county taxing district. Necessarily, then, the act of 1899, which exempts this part of the county taxing district from the payment of all county taxes, except those for the court fund, thereby establishing two rules for levying county taxes in the same district, comes within the

provision of the act of Congress forbidding special and local legislation "for the assessment and collection of taxes for . . . county . . . purposes." It is both a special and a local law; special, because the property to which it applies is thereby set apart from the rest of such property in the same taxing district; local, because its application is limited to a part of the county taxing district.

A case directly in point is *Van Loon* v. *Eagle*, 171 Pa. St. 157. In that case the Supreme Court of Pennsylvania held that an act making taxes assessed upon real estate a first lien and providing for the collection of such taxes, which excepted from its operation cities of the first, second, and fourth classes, violated the provision of the State constitution prohibiting the passage of local or special laws regulating the affairs of counties, cities, townships, etc. The court said (pp. 164–5):

> The act of 1881 purports to be a general law, and provides that "all taxes, whether county, township, poor, school, or municipal taxes" shall be a first lien on the real estate on which such taxes are assessed. It provides for the return of such lands upon nonpayment of the taxes and for their sale for the collection of the taxes unpaid. Cities of the first, second, and fourth classes are excepted from its operations. Townships, boroughs, and cities of the third class remain under its operations. *We thus have one system for the collection of taxes and for creating liens in one class of cities, and a different system in the other classes.*
>
> . . .
>
> This is so clearly in the face of the constitutional provisions referred to, and so destructive to that uniformity of procedure upon subjects of general interest which it is the object of the Constitution to bring about and preserve, that a simple statement of the necessary consequences of the enforcement of the act of 1881 renders an argument upon the constitutional questions unnecessary.

In *Board* v. *State*, 145 Ind. 604, the Supreme Court of Indiana held that an act providing for the relocation of a

county seat, that being a county purpose and requiring the levy and collection of a special tax in the township in which the county seat should be located, was in contravention of the constitutional provision forbidding the legislature to pass local or special laws "for the assessment and collection of taxes for State, county, or road purposes." The act was also held to violate the rule of uniformity and equality prescribed by the constitution.

VIII. The Validity of the Assessment.

The brief of counsel for appellees is addressed largely to the contention that the assessment of their property was irregular and without authority of law.

In *Russell* v. *Green*, 10 Okla. 340, before referred to, the Supreme Court of Oklahoma in reply to the contention that the cattle of the appellant were assessed in the State of Texas for the same year prior to the time they were brought into Oklahoma, and that he had so advised the assessor and signed and sworn to a statement which he supposed, at the time he swore to it, showed that fact, said (p. 341):

> As the plaintiff is a non-resident of the Territory his cattle are included within the provisions of sec. 1 of the transient property act, and can not be discharged from taxation under sec. 3 of that act, as sec. 3 only refers to persons who settle in a county and bring property into such county with them, or to associations or corporations which organize in a county and bring property into such county (Collins & Wallace *v.* Green, Treas., Lancaster & Noble *v.* Green, Treas., M. Holff & Bro. *v.* Green, Treas., all decided at the present term of this court).

As to the authority of the county assessor of Noble County to assess cattle and other personal property in the Ponca and Otoe Indian reservations there can be no question. The Supreme Court of Oklahoma held (Rec., pp. 42–43)

that the effect of the act of 1897, in doing away with the system of township assessors, was to repeal that part of the act of 1895 providing a special assessor for unorganized territory attached to a county, such assessor being, in fact, a part of the township system, having been given under the law the powers and duties of a township assessor, and to vest in the county assessor provided thereby jurisdiction over the entire county taxing district, which included such unorganized territory.

This was undoubtedly the logical and reasonable view to take of the act of 1897. But whether correct or not, it should be accepted by this court for the reasons heretofore adverted to. The supreme court of a Territory, equally with the supreme court of a State, is the proper tribunal to construe the enactments of its legislative department, which have only a local application, and which, as construed, do not conflict with the Constitution, laws or treaties of the United States.

The contention as to irregularity in the assessment of appellees' property is also without merit. The board of county commissioners of Noble County was, under the law, the proper authority to correct any errors in such assessment, and the petition shows that appellees were accorded a hearing before that board. The fact that the board rescinded its action releasing their property from taxation and sustained the assessment is a matter of which they can not complain. This the board had a perfect right to do while the matter was still within their control, and neither notice to or the consent of the appellees was necessary. A hearing was all they were entitled to, and that they had.

These questions were all pressed upon the attention of the courts below, but the judgment of the Supreme Court of Oklahoma sustaining the act of 1899 proceeds upon the theory that the proceedings of the county officers for the assessment and collection of the taxes for the court and territorial funds were regular and proper.

IX. The Exemptions Made by the Act of 1899 Arbitrary and Unjust.

As pointed out in appellants' original brief (pp. 5-6), the effect of the act of 1899 will be to relieve property owners in these Indian reservations from their proper share of the burdens of government. While the reservations are not, as a matter of fact, a part of the county, they are so, for all practical purposes, and the people and property therein derive a substantial equality of benefit from the several county funds with the people and property in the county to which they are attached, and from which they are separated only by an imaginary line. This, as already stated, was held to be the fact in *Thomas* v. *Gay*, where this court, referring to the reservations attached to Kay County, said (169 U. S. p. 278):

> It is further contended that, while the taxes assessed for territorial and court expense funds may be valid, yet that the balance of the taxes, levied for county purposes and expended within the geographical limits of Kay County, are unauthorized, for the reason that the people on these reservations are not interested in such taxes and receive no benefit from their expenditure. But, as it seems to us, it can not be maintained that those plaintiffs whose cattle are within the protection of the laws of Oklahoma receive no benefit from the expenditures in Kay County. Certainly they have some advantage in the improvement of the roads within that county when they journey to and from the towns and settlements in the organized county. They are interested in the prevalence of law and order in the communities adjacent to their property, and in the provision made for the care of the poor and insane. It is to be presumed that they have a right to send their children to the schools in the organized county.

The argument based on the fact that prior to the act of 1895 property in these reservations was not taxed at all, and that therefore the legislature may subject such property

to whatever burdens it sees fit, is as startling as it is fallacious. Surely the legislative power is not so omnipotent and property owners so defenseless. The correct view, we contend, is, that while property in any unorganized country in a State or Territory may be allowed to go untaxed as long as the conditions are such as to render the collection of taxes therein impracticable, as for want of proper machinery, yet, when that stage in its development is passed and taxation becomes feasible, such property must be made to bear, and continue to bear, its proportionate share of the burdens of government.

Applying these principles to the present case, it would seem that if, as this court has held, personal property in these Indian reservations was rightfully subjected to the same taxation as like property in the county to which they are attached, it can not now, and so long as it remains a part of the county taxing district, be exempted therefrom in whole or in part.

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